



"Lerner, Stephen D."
<SLerner@ssd.com>
06/08/2006 01:20 PM

EPA Region 5 Records Ctr.



366996

To Alan.Tenenbaum@usdoj.gov, "Brooks, Patrick J."
<PBrooks@ssd.com>, LPutman@milbank.com,
ssamuels@szd.com, vpowers@szd.com
cc Elise.Feldman@usdoj.gov, Catherine
Garypie/R5/USEPA/US@EPA, TKreller@milbank.com,
wvawest@ameritech.net, cgibbons@szd.com, "Winters,
bcc

Subject RE: CTA

We are going to leave as is. The CTA won't be signed until after the plan is confirmed which requires the settlements to be approved as a condition. Thus, it is correct and appropriate for the CTA to refer to the settlements as approved. No court filing provides and the Debtors and Committee fully understand that EPA/DOJ have not approved the settlements. There is no confusion on this point.

Patrick, pls provide the form of notice to the States for their review.

Thanks.

-----Original Message-----

From: Alan.Tenenbaum@usdoj.gov [mailto:Alan.Tenenbaum@usdoj.gov]
Sent: Thursday, June 08, 2006 1:34 PM
To: Brooks, Patrick J.; LPutman@milbank.com; ssamuels@szd.com;
vpowers@szd.com; Lerner, Stephen D.
Cc: Elise.Feldman@usdoj.gov; garypie.catherine@epa.gov;
TKreller@milbank.com; wvawest@ameritech.net; cgibbons@szd.com; Winters,
Karen
Subject: RE: CTA

The whereas clauses of the CTA refer to all the settlements as if they have already been approved. The Notice says the US has no objection to the terms of the Agreement. Are we all in agreement that by saying that the US has no objection to (or will not be objecting to) the terms of the Agreement we would not be saying that the settlements are already approved? I do not have authority myself to approve the settlements (the language of which is also not yet final).

I think it would be better to say "will not be objecting to" rather than "have no objection to". I will be able to tell you we won't be filing an objection. But since you've set this up for signature by us, I will, separate from that, also need to submit this for signature along with the Settlement Agreements to the person with authority. If in theory, the person with authority wanted to go against our recommendation to go on record as agreeing consensually with the settlements, then we would still not object to the form of the Trust Agreement although it would operate without us as a party to the settlements.

-----Original Message-----

From: SLerner@ssd.com [mailto:SLerner@ssd.com]
Sent: Thursday, June 08, 2006 12:28 PM
To: Tenenbaum, Alan (ENRD); PBrooks@ssd.com; LPutman@milbank.com;
ssamuels@szd.com; vpowers@szd.com

Cc: Feldman, Elise (ENRD); garypie.catherine@epa.gov;
TKreller@milbank.com; wvawest@ameritech.net; cgibbons@szd.com;
KWinters@ssd.com
Subject: RE: CTA

I take it you have no comments to the notice other than re Ohio. We have not sent to any States yet and we will. Note that no state preserved any objection to the CTA but we will seek their no objection anyway.

Patrick will respond to 2.7.

Will get back to you on proposed protective email.

-----Original Message-----

From: Alan.Tenenbaum@usdoj.gov [mailto:Alan.Tenenbaum@usdoj.gov]
Sent: Thursday, June 08, 2006 12:16 PM
To: Brooks, Patrick J.; LPutman@milbank.com; ssamuels@szd.com; vpowers@szd.com; Lerner, Stephen D.
Cc: Elise.Feldman@usdoj.gov; garypie.catherine@epa.gov;
TKreller@milbank.com; wvawest@ameritech.net; cgibbons@szd.com; Winters, Karen
Subject: RE: CTA

Thanks, are you including Ohio as a relevant State? I don't believe you sent it to them.

Where do we stand on my last comment on Section 2.7?

Will you be sending me a draft of the protective email as well?

Thanks. Alan.

-----Original Message-----

From: SLerner@ssd.com [mailto:SLerner@ssd.com]
Sent: Thursday, June 08, 2006 11:45 AM
To: Tenenbaum, Alan (ENRD); SLerner@ssd.com; PBrooks@ssd.com; LPutman@milbank.com; ssamuels@szd.com; vpowers@szd.com
Cc: Feldman, Elise (ENRD); garypie.catherine@epa.gov;
TKreller@milbank.com; wvawest@ameritech.net; cgibbons@szd.com;
KWinters@ssd.com
Subject: RE: CTA

Attached is a draft notice re the CTA and admin costs. Pls provide comments at your earliest convenience today. Thanks.

-----Original Message-----

From: Lerner, Stephen D.
Sent: Thursday, June 08, 2006 9:30 AM
To: 'Alan.Tenenbaum@usdoj.gov'; Brooks, Patrick J.; LPutman@milbank.com; ssamuels@szd.com; vpowers@szd.com
Cc: Elise.Feldman@usdoj.gov; garypie.catherine@epa.gov;
TKreller@milbank.com; wvawest@ameritech.net; cgibbons@szd.com; Winters, Karen; Lerner, Stephen D.
Subject: RE: CTA

We will send you shortly the form of notice that we would propose to file tomorrow attaching the agreed form of CTA indicating that DOJ/EPA and the States have no objection to the form of CTA and the funding of admin costs in the amounts proposed.

Once we have final signoff on the CTA, admin costs and notice, we will send you an email confirming that DOJ/EPA's non-objection to the foregoing will not prejudice DOJ/EPA's appellate rights.

-----Original Message-----

From: Alan.Tenenbaum@usdoj.gov [mailto:Alan.Tenenbaum@usdoj.gov]
Sent: Wednesday, June 07, 2006 7:58 PM
To: Brooks, Patrick J.; LPutman@milbank.com; ssamuels@szd.com; vpowers@szd.com
Cc: Elise.Feldman@usdoj.gov; garypie.catherine@epa.gov; TKreller@milbank.com; wvawest@ameritech.net; cgibbons@szd.com; Winters, Karen; Lerner, Stephen D.
Subject: RE: CTA

In 2.6b, Please change "if applicable" to "if Environmental Actions remain to be completed at the time of disposition" which is what I think you mean.

In 2.7, don't you mean upon termination of the Trust? The Agreement has several provisions relating to notices to parties and court and final report etc. that may occur after these events. Wouldn't this language override these cuties?

I have not yet reviewed the figures you sent this afternoon to backup the 15%, but don't delay sending to States on that account.

You and the Committee were going to get back to me on sending me an email that our not objecting/agreement to the Trust Agreement's provisions on page 3 etc. would be without prejudice to our right to appeal the amount of Ohio funding under the Court's yet to be made ruling. But, again, don't delay sending to States for that reason.

-----Original Message-----

From: PBrooks@ssd.com [mailto:PBrooks@ssd.com]
Sent: Wednesday, June 07, 2006 6:46 PM
To: Tenenbaum, Alan (ENRD); vpowers@szd.com; ssamuels@szd.com; LPutman@milbank.com
Cc: Feldman, Elise (ENRD); cgibbons@szd.com; SLerner@ssd.com; wvawest@ameritech.net; TKreller@milbank.com; KWinters@ssd.com; garypie.catherine@epa.gov
Subject: RE: CTA

Attached is a revised version.

Alan: We tweaked your 2.6 language slightly and I corrected a typo or two. Let me know if we are good to go.

Patrick